No. 86-1628

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MICHAEL TELLIS,

Petitioner,

v.

UNITED STATES FIDELITY AND GUARANTY COMPANY and PARKER HOUSE SAUSAGE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION FOR RESPONDENT PARKER HOUSE SAUSAGE COMPANY

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QUESTIONS PRESENTED

The Court of Appeals followed the teachings of this Court set forth in *Wilson v. Garcia*, 471 U.S. 261 (1985), and selected a statute of limitations for all RICO actions brought in Illinois from among the limitations statutes available in that state.

The only questions presented in the instant case are:

1. Whether the appropriate statute of limitations for RICO actions brought in Illinois is § 13-202 of the Illinois Code of Civil Procedure (two years) or § 13-205 of the same Code (five years).

2. Whether the judgment below is correct in any event because, besides being barred by the applicable statute of limitations, Plaintiff's claim was also barred by the exclusive remedy provision of the Illinois Worker's Compensation Act, since his RICO claim was for additional Worker's Compensation benefits he claims defendants denied him.

LIST OF PARTIES

The parties in the Court of Appeals and in the District Court are the same parties whose identities are indicated in the caption of the case in this Court.

United States Fidelity & Guaranty Company has a parent corporation known as United States Fidelity & Guaranty Corporation. This corporation is a Maryland corporation and owns 100% of the stock of Respondent United States Fidelity & Guaranty Company.

Parker House Sausage Company has no parent corporation, subsidiary, or affiliate corporation.

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STATUTES INVOLVED

1. **Racketeering Influenced & Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.***

   Pertinent portions are:

   § 1964(c)

   (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States dis-

trict court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

§ 1961(1)(A)

(1) "[R]acketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year.

§ 1961(5)

(5) "[P]attern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

§ 1962(c)

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

2. **Illinois Code of Civil Procedure, Ill. Rev. Stat., Ch. 110.**

Pertinent portions are:

§ 13-202

Personal injury—Penalty. Actions for damages for an injury to the person, or for false imprisonment, or malicious prosecution, or for a statutory penalty, or for abduction, or for seduction, or for criminal conversation, except damages resulting from murder or the commission of a Class X felony and the perpetrator thereof is convicted of such crime, shall be commenced within 2 years next after the cause of action accrued

but such an action against a defendant arising from a crime committed by the defendant in whose name an escrow account was established under the "Criminal Victims' Escrow Account Act" shall be commenced within 2 years after the establishment of such account.

§ 13-205

Five year limitation. Except as provided in Section 2-725 of the "Uniform Commercial Code", approved July 31, 1961, as amended, and Section 11-13 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued.

3. **Illinois Worker's Compensation Act, Ill. Rev. Stat., Ch. 48, § 138.1 *et seq.***

Pertinent portions are:

§ 138.5(a)

No common law or statutory right to recover damages from the employer [or] his insurer * * * for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act.

§ 138.19(k)

In any case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation * * * then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award.

§ 138.16

Whenever the commission shall find that the employer, his agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, [or] intentional underpayment of compensation benefits * * * within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his insurance carrier.

STATEMENT OF THE CASE

This was an action brought under the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"), against Parker House Sausage Company and United States Fidelity and Guaranty Company ("USF&G").

Parker House Sausage Company had been the plaintiff's employer, and USF&G was Parker House's Worker's Compensation carrier. Plaintiff's claim was that Parker House and USF&G conspired together to trick him into accepting a lump-sum settlement of his worker's compensation claim by falsely promising him that he could return to work for "light duty" at Parker House if he did so. The injury asserted was that, due to the settlement, which was approved after a hearing before an arbitrator for the Illinois Industrial Commission, plaintiff waived various other rights he could have had under the Illinois Worker's Compensation Act, Ill. Rev. Stat., Ch. 48, ¶ 138 *et seq.*

Plaintiff's Amended Complaint described the waived Worker's Compensation benefits as an injury to his "business or property". The pleading included allegations of predicate acts and a pattern of racketeering, and sought treble damages under RICO.

This pleading was dismissed by the district court upon motions by the defendants raising several grounds. Among the grounds proffered by the defendants, the district court chose to dismiss the suit for the reason that it was barred by the exclusive remedy provision of the Worker's Compensation Act.

Plaintiff appealed this decision to the Court of Appeals for the Seventh Circuit. Among the several grounds enumerated by the defendants to support the judgment of dismissal, the Court of Appeals chose to affirm for the reason that the suit was barred by the statute of limitations.

In so doing, the Court of Appeals followed the guiding principles enunciated by this Court in *Wilson v. Garcia*, 471 U.S. 261 (1985). The Court of Appeals recognized that Congress had chosen not to fix a limitations period for civil actions brought under RICO, determined that it would be appropriate to apply a statute of limitations of the forum state, and also determined that a single statute of limitations should be chosen from the law of the forum state to govern all RICO claims brought there, rather than making that selection on a case-by-case basis. After examining the statutes of limitations which were available in Illinois, the Court of Appeals selected one with a two year period, (Ill. Rev. Stat., Ch. 110, § 13-202) governing actions for a "statutory penalty," to apply to this and all civil RICO actions for treble damages. The Court rejected plaintiff's arguments that a "catchall"

statute (Ill. Rev. Stat., Ch. 110, § 13-205), with a five year period, should apply.

The Plaintiff's Petition for Rehearing and Suggestion for Rehearing *In Banc* was denied.

REASONS FOR DENYING THE WRIT

I.

ONLY ONE OF THE ISSUES PETITIONER HAS ENUMERATED IS REALLY PRESENTED BY THIS PETITION, AND THAT ISSUE IS OF LIMITED INTEREST.

Throughout his appeal to the Court below, the Petitioner consistently urged that this Court's decision in *Wilson v. Garcia*, 471 U.S. 261 (1985), dictates the methodology for determining what statute of limitations should apply to civil actions brought under RICO. Petitioner is not now contending that the Court of Appeals failed to do so and is not contending that this Court should overrule *Wilson v. Garcia*.

In *Wilson v. Garcia*, this Court affirmed that when Congress creates a civil cause of action but does not prescribe a limitation as to the time in which it may be brought, it is the settled practice to adopt an appropriate time limitation of the forum state, as long as it is not inconsistent with the federal law or with federal policy to do so. 105 S.Ct. 1938, 1942. Although Question Number One as it appears in the Petition asks whether a state limitations period or a federal limitations period should apply to civil RICO actions, Petitioner admits in the body of his argument (page seven) that this question has never

been and is not now an issue presented by the Seventh Circuit's decision. Petitioner expressly acknowledges that all parties agreed in the court below that an Illinois statute of limitations should govern this case. Petitioner also acknowledges that the Seventh Circuit's ruling was exactly to that effect, and Petitioner does not now ask this Court to reverse the ruling in this respect. Petitioner is expressly arguing (heading number one, page seven), that the law should be as the Seventh Circuit has already declared it to be in this case.

Question Number Two as it appears in the Petition is likewise not really an issue presented by this case. Again Petitioner has admitted that in the court below all parties agreed that a single statute of limitations should be chosen in each state to govern all civil RICO actions brought there, rather than applying different statutes depending upon the particular allegations in any given complaint. Again, this is exactly what the Seventh Circuit held and, again, Petitioner is not asking this Court to reverse this ruling.

Thus only Question Number Three states an issue genuinely presented by this case. Question Number Three asks whether the appropriate statute of limitations to govern civil RICO actions brought in Illinois is a limitations period in that state applying to cases for a "statutory penalty," or whether it should instead be a "catchall" limitations period.

This question is of very limited interest. No RICO litigants except those within the state of Illinois are effected by this ruling, and only a small number of those need be concerned. The issue is really only of interest to Illinois civil RICO claimants whose potential actions arose more than two years before they filed or will file suit.

II.

THERE IS NO CONFLICT OF DECISIONS HERE, NEITHER WITH *WILSON v. GARCIA* NOR WITH THE DECISION OF THE THIRD CIRCUIT BEING REVIEWED IN NOS. 86-497 AND 86-531, CONS.

As we indicated above, the Court of Appeals in this case expressly followed this Court's ruling in *Wilson v. Garcia, supra,* and Petitioner is not now contending that *Wilson* should be overruled.

Petitioner apparently hopes to induce this Court to grant the writ simply because it has agreed to entertain review of the Third Circuit's decision in *Malley-Duff & Associates, Inc. v. Crown Life Ins. Co.*, 792 F.2d 341 (1986) pending in the Court as *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, No. 86-497 and *Crown Life Ins. Co. v. Malley-Duff & Associates, Inc.*, No. 86-531 (consolidated cases). But the decision of the Seventh Circuit in the case at bar is not in conflict with the *Malley-Duff* decision either.

Both *Malley-Duff* and the Seventh Circuit in the case at bar followed *Wilson v. Garcia, supra.* The decisions only differ from one another in that the Third Circuit chose a catchall limitations period for RICO actions in Pennsylvania, while the Seventh Circuit rejected the catchall period provided in Illinois and instead chose a limitations statute available in that state for actions for a "statutory penalty." Since two different states were involved, each with its own set of statutes of limitation, no real conflict is presented by these decisions.

III.

THE COURT OF APPEALS' CHOICE AMONG THE AVAILABLE ILLINOIS STATUTES OF LIMITATIONS WAS CORRECT.

Petitioner's suit was based on a statute (RICO, 18 U.S.C. § 1961 *et seq.*), creating a cause of action and authorizing treble damages. The Court of Appeals noted that Illinois has a specific statute of limitations for actions for a "statutory penalty." The Court of Appeals based its conclusion that a statutory action for treble damages is an action for a "statutory penalty" on a long line of precedents which support the unquestioned fact that treble damages are by definition punitive, or penal, in nature. The purpose of treble damages is not merely to remedy a wrong, but to punish the wrongdoer, to dissuade future wrongdoers, and to provide incentive to persons who have been aggrieved to pursue suit.

Since Illinois has a statute of limitations specifically designed for causes of action created by statute and imposing a penalty, the Court of Appeals was correct in holding that this statute applies to civil RICO actions for treble damages. No resort to a mere "catchall" statute was necessary.

It states the obvious to note that Petitioner had urged the "catchall" statute because it was longer and his claim would not have been barred if he could have persuaded the Court to apply it. But the two year period provided by the statute the Court chose is more than sufficient for a RICO claimant, particularly the Petitioner himself. The whole basis of his claim is that he had been promised that if he accepted a lump sum settlement of his Worker's Compensation claim he would be rehired for "light duty" at Parker House. Immediately after the settlement was accomplished he learned that in fact he was not going to

be rehired for "light duty" at Parker House. If he believed a fraud of some sort was perpetuated upon him, he had all the grounds for that belief at that moment. Yet Petitioner waited three years and two months to bring his suit.

There is nothing peculiar about RICO, and surely nothing special about this case, that makes it unfair to have required that the suit have been brought within two years' time. Two years is an ample period and, in fact, was precisely the amount of time prescribed by the statute approved by this Court in *Wilson* for application to civil rights actions under 42 U.S.C. § 1983.

IV.

THE JUDGMENT OF DISMISSAL WAS PROPERLY AFFIRMED BECAUSE THE PETITIONER'S CAUSE OF ACTION FOR ALLEGEDLY LOST WORKER'S COMPENSATION BENEFITS WAS BARRED BY THE EXCLUSIVE REMEDY PROVISION OF THE ILLINOIS WORKER'S COMPENSATION ACT IN ANY EVENT.

The injury that the Petitioner complained of in this case consists entirely of what he perceives as lost benefits available to him under the Illinois Worker's Compensation Act. Petitioner has enumerated these rights as his right to file a claim, his rights to further temporary total disability benefits, to lifetime medical treatment, to vocational rehabilitation, and to seek review based on change in his physical condition.

But the Worker's Compensation Act expressly provides that the remedies afforded by the Act are to be the *sole* remedies to be pursued by an employee against his employer for work-related injuries. Section 5(a) of the Act (Ill. Rev. Stat., Ch. 48, par. 138.5(a)) states:

> No common law or statutory right to recover damages from the employer [or] his insurer * * * for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act.

This bar against suits for damages extends to any injury which may have occurred to an employee by reason of "vexatious delay of payment or intentional underpayment of compensation" due under the Act. See *Robertson v. Travelers Insurance Company*, 95 Ill. 2d 441, 448 N.E. 2d 866, 870 (1983). The statute has its own penalties for such occurrences, and is already designed to deal with any unfairness on the part of the employer with regard to worker's compensation proceedings. The statute provides as follows:

> § 19(k) (Ill. Rev. Stat., Ch. 48, § 138.19(k))
>
> In cases where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation * * * then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award.
>
> § 16 (Ill. Rev. Stat., Ch. 48, § 138.16)
>
> Whenever the Commission shall find that the employer, his agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, [or] intentional underpayment of compensation benefits * * * within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the at-

torney's fees and costs against such employer and his insurance carrier.

The Supreme Court of Illinois has expressly held that an employee aggrieved by the way in which his employer handled his worker's compensation claim is relegated to the Act itself to seek redress. In *Robertson v. Travelers Insurance Company, supra,* that Court held that an employee could not maintain a common law action for emotional distress based on allegedly outrageous conduct with regard to his workmen's compensation claim. In that case, as in the case here, the plaintiff had alleged that the defendant was "maliciously deceptive" during the workmen's compensation proceedings.

It is clear, then, that besides being barred by time, Plaintiff's ability to pursue the RICO claim he phrased was also precluded by the substantive bar embodied in the Worker's Compensation Act under which he wishes further benefits.

CONCLUSION

It is clear from the Petition itself that this case does not warrant review by this Court. No conflict of decisions is involved. Only one of the issues the Petitioner has phrased is really an issue in this case, and that issue is only of limited interest. The decision of the Court of Appeals on this issue, namely, the choice between two statutes of limitation available in the state of Illinois for application to all civil RICO actions for treble damages, was correct.

Petitioner's claim was not only properly dismissed as barred by the statute of limitations, however, but was also properly dismissed as barred by the exclusive remedy provision of the Illinois Worker's Compensation Act, which was the source of the benefits he sought to recover under his RICO claim.

For the foregoing reasons, Respondent Parker House Sausage Company respectfully urges the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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